

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ABDUL NASIR JIHAD,

Petitioner,

v.

**2:06 CV 55
(Maxwell)**

WARDEN JOYCE FRANCIS,

Respondent.

ORDER

It will be recalled that on May 26, 2006, *pro se* Petitioner Abdul Nasir Jihad instituted the above-styled civil action by filing an Application For Habeas Corpus pursuant to 28 U.S.C. §2241.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Standing Order No. 2 and Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

By Order To Show Cause entered June 7, 2006, Magistrate Judge Seibert indicated that he had conducted a preliminary review of the file and had determined that summary dismissal was not appropriate at that time. Accordingly, Magistrate Judge Seibert's June 7, 2006, Order directed the Respondent to show cause why the Petitioner's § 2241 Petition should not be granted.

The Respondent's Response To Show Cause Order was filed on July 6, 2006. A Response To Respondent's Replial To 28 USC 2241(c)(3) Action was filed by the Petitioner on August 2, 2006.

On August 25, 2006, Magistrate Judge Seibert entered a Report And

Recommendation wherein he recommended that the Petitioner's Application For Habeas Corpus pursuant to 28 U.S.C. §2241 be denied and dismissed with prejudice.

In his Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report And Recommendation.

The Petitioner's Objections to Report and Recommendations of these Honorable Magistrate Judge James E. Seibert of Dismissal of Civil Number 2:06CV-55 were filed on September 11, 2006.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the Magistrate Judge's findings to which objection is made. The Court is not, however, required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the findings or recommendation to which no objections are made. Thomas v. Arn, 474 U.S. 140, 150 (1985).

As previously noted, on September 11, 2006, the Petitioner filed Objections to Magistrate Judge Seibert's August 25, 2006, Report And Recommendation. The Court has conducted a *de novo* review only as to the portions of the Report and Recommendation to which the Petitioner objected. The remaining portions of the Report And Recommendation to which the Petitioner has not objected have been reviewed for clear error.

The Court finds that the issues raised by the Petitioner in his Objections to

Magistrate Judge Seibert's August 25, 2006, Report And Recommendation were thoroughly considered by Magistrate Judge Seibert in said Report And Recommendation. The Court is of the opinion that Magistrate Judge Seibert's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge Seibert on August 25, 2006 (Docket No. 9), be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Application For Habeas Corpus pursuant to 28 U.S.C. §2241 (Docket No. 1) be, and the same is hereby, **DISMISSED, with prejudice**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within sixty (60) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: May 14 , 2009

/S/ Robert E. Maxwell
United States District Judge